



found that a December 15, 2007 request for reconsideration was not timely filed and that OWCP and the employing establishment engaged in a pattern of fraud and deceit in processing her compensation claim.

### **FACTUAL HISTORY**

This case has previously been before the Board. In a December 15, 2006 decision, the Board affirmed OWCP's May 22, 2006 denial of appellant's claim for a respiratory condition due to insufficient medical evidence explaining how work factors caused a diagnosed condition.<sup>3</sup> Pursuant to the second appeal, by decision and order issued June 17, 2010,<sup>4</sup> the Board affirmed OWCP's April 3, 2009 decision finding that appellant's December 19, 2008 request for reconsideration was not timely filed and failed to present clear evidence of error. The law and facts of the case as set forth in the Board's prior decision and order are incorporated by reference.

In a June 9, 2011 letter, appellant requested reconsideration of the Board's June 17, 2010 nonmerit decision. She asserted that the claimed respiratory condition was both due to a single occupational exposure to carbon monoxide on January 20, 2005 and to multiple workplace incidents but that she should have received continuation of pay in either case. Appellant submitted a December 15, 2007 certificate of mailing which, she asserted, showed that she mailed a reconsideration request to an incorrect address. She also submitted a January 20, 2005 emergency room nursing triage sheet not signed by a physician.

By decision dated September 21, 2011, OWCP denied appellant's request for reconsideration without reviewing the merits of the claim. It found that her June 9, 2011 letter and accompanying evidence neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a further merit review. OWCP further found that the triage sheet was irrelevant to the crucial issue in the case at the time of the May 22, 2006 merit decision, the causal relationship of the claimed respiratory condition to work factors.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>5</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three

---

<sup>3</sup> Docket No. 06-1980 (issued December 15, 2006).

<sup>4</sup> Docket No. 09-2374 (issued June 17, 2010).

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>8</sup> The claimant need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>9</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>10</sup>

### ANALYSIS

The last merit decision issued by OWCP was on May 22, 2006, denying her claim for a respiratory condition on the grounds that causal relationship was not established.

Appellant's June 9, 2011 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law or advance a new legal argument not previously considered by OWCP. The critical issue at the time of the May 22, 2006 merit decision was the medical question of whether the claimed respiratory condition was related to established exposure to cleaning chemicals in the workplace. Appellant's June 9, 2011 letter, the certificate of mailing and triage sheet do not contain probative evidence on the relevant issue. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.<sup>11</sup> As FECA's implementing regulations note, an application for reconsideration must set forth arguments or evidence satisfying one of the three requirements for obtaining a merit review.<sup>12</sup> Consequently, appellant is not entitled to a review of her case on the merits based on the third requirement under section 10.606(b)(2).<sup>13</sup>

On appeal, appellant asserts that OWCP failed to consider medical evidence submitted on reconsideration, failed to accept a claimed respiratory condition as a traumatic injury, wrongfully found that a December 15, 2007 request for reconsideration was not timely filed and that OWCP and the employing establishment engaged in a pattern of fraud and deceit in handling her compensation claim. As set forth above, her June 9, 2011 letter requesting reconsideration and the accompanying evidence were irrelevant to the claim. Also, the Board notes that appellant did

---

<sup>7</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

<sup>8</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>9</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>10</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>11</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>12</sup> 20 C.F.R. § 10.608(b).

<sup>13</sup> *Id.* at § 10.606(b)(2)(iii).

not file a petition for reconsideration with the Board within 30 days of issuance of the June 17, 2010 decision and order. Therefore, that decision became final.<sup>14</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 21, 2011 is affirmed.

Issued: November 28, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>14</sup> *Id.* at §§ 501.6(d) and 501.7(a). *See also* C.S., Docket No. 12-112 (issued June 18, 2012).